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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,156	11/06/2000	Vivian A. Schramm	MRS-015U	8663
52966	7590	04/22/2010		
Michael R. Schramm 350 West 2000 South Perry, UT 84302			EXAMINER WEINSTEIN, STEVEN L.	
			ART UNIT 1782	PAPER NUMBER
			NOTIFICATION DATE 04/22/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/707,156

Applicant(s)

SCHRAMM ET AL.

Examiner

Steven L. Weinstein

Art Unit

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/02)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Claims 1-14 and 21-26 are rejected under 35 U.S.C. 112 first paragraph for containing New Matter and being based on a non-enabling disclosure for the reasons given in the Office action mailed 5/19/09 and 10/26/09.

As noted previously, the various length/volume recitations previously presented in claims 1,8 and 21, and further including the newly added recitations added to claim 21 relative to the gap/diameter of the handle/diameter of the candy article are New Matter, not necessarily and inherently supported by the specification as originally filed. Claim 21 now recites that a "substantial" gap (not otherwise defined/disclosed) is formed between the funnel second open end and the candy article such that "when the container is repositioned from a first position to a second position" (not otherwise defined/disclosed) cooperate so as to provide for the flow of the particulate candy substance through the gap so as to enable the coating of substantially the entire exterior of the candy article with the particulate substance. Not only is there no necessarily and inherent support for the phrases in question, the functional result would be affected by other factors such as the quantity of the particulate material and the quantity of the candy article, none of which is disclosed.

Claims 1-14 and 21-26 are first rejected using Product Alert (3/23/98) as the primary reference.

That is, claims 1-14 and 21-26 are rejected under 35USC103(a) as being unpatentable over Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the

references labeled exhibits A,B,D,F and G, Baker (WO 00/19803), Coleman ('884), Hoeting et al ('870) and applicants' admission of the prior art, in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174), Ciffo (2,917,766), Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), and further in view of Vogelsang (4,522,523) and Manzone (4,522,523), for the reasons fully and clearly set forth in the Office actions mailed 11/6/08, 5/19/09 and 10/26/09.

As discussed previously, the particular dimensional/volumetric relationships between the various elements are seen to have been, at best, an obvious result effective variable, routinely determinable, and an obvious matter of choice. Claim 21 now links newly recited qualitative dimensional relationships between the funnel second open end and the inserted candy article and the candy article and the handle with the functional capability that such relationships provide for the capability of the particulate material to "flow" around substantially the entire exterior of the candy article so as to enable the coating of substantially the entire exterior of the candy article. Thus, the claim links dimensional relationships to a capability of the container, via an intended use thereof. As noted above, these dimensional relationships are New Matter not necessarily and inherently supported by the application as originally filed. In any case, the art taken as a whole disclose various product containing container structures that include an anti-spill funnel as well as a dipable device to be inserted in the container to associate some of the contents of the container with the end portion of the dipping

device (i.e. the work piece) and remove a portion of the contents from the container, and wherein the dipping device is separate from or associated with a lid for the container. The containers of Ciffo, Schramm ('046), McCombs, Corteggiani et al, Pilot Ink and Vogelsang all disclose container, funnel, contents, and dipper device recited qualitative dimensional arrangements, including the recited qualitative dimension of the gap defined by the bottom end of the funnel and the dipper device, such that the contents would be capable of flowing around substantially the whole part of the dipper device, that one wishes to have the contents applied thereto, whether that flowing is the result of immersing the dipper device into the product or shaking the container. The containers could, at any time, be capable of being shaken, and such shaking is a matter of intended use and thus how one applies the contents to the container is seen to have been an obvious matter of intended use.

Claims 1-14 and 21-26 are also rejected under 35 U.S.C. 103(a) using Price as the primary rejection.

Thus, claims 1-14 and 21-26 are rejected under 35USC103(a) as being unpatentable over Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174), Ciffo (2,917,766), Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the references labeled exhibits A,B,D,F and G, Baker

(WO 00/19803), Coleman ('884), Hoeting et al ('870), and applicants' admission of the prior art, for the reasons fully and clearly set forth in the Office action mailed 11/6/08, and further in view of Vogelsang ('523) and Manzone, essentially for the reasons fully and clearly set forth in the Office actions mailed 11/6/08, 5/19/09 and 10/26/09, and for the reasons given above.

All of applicants remarks, filed 1/15/10, have been fully and carefully considered but are not found to be convincing for the reasons that have been fully and clearly documented on the record over the course of the prosecution of this application, as well as the additional remarks made above in the body of the rejection. On page 7 of the amendment, it is urged that the New Matter rejection vis-à-vis the eraser should be withdrawn since this limitation is no longer present. Implicit in the rejection under 35USC112, 1st paragraph, set forth in the Office action mailed 10/26/09, which referenced the Office action mailed 5/19/09, was that the rejection stood based on the claims present as of applicants' communication filed 8/19/09. This is why the comments made on page 2, para. 2 of the Office action mailed 10/26/09 only refers to the spatial issues. There is no reference to the deleted eraser recitation. The urgings relative to the spatial issues have been fully and carefully considered, but since there is no text in the specification to support the recitations, and applicants' urgings that the drawings provide such support has not been found to be convincing for the reasons of record, the 35USC112, 1st paragraph rejection stands for the reasons of record.

The urgings relative to the 35USC103 rejections have also been fully and carefully considered but are also not convincing for the reasons fully detailed in the

record. It is noted that Hoeting et al has not been used as the primary reference nor has it been used to teach a funnel, which the previous Office actions clearly noted. The referencing of Hoeting et al, relative to the intended use recitation of shaking, was only to point out the obvious and common sense fact that a wetted solid can be coated by a particulate solid by shaking the container that contains both of the components. Such shaking to coat or associate the dipping end of a dipping device (that is the work piece) with the contents of a container, would be operable whether the contents of the container was a liquid or flowable particulate. The art taken as a whole is replete with examples of dipping devices wherein the dipping end or work piece can be completely associated or coated with the contents of a container either statically or dynamically. It is therefore not seen that patentability can be predicated on this limitation.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M-3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794